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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,947

11/14/2003

Thomas J. Nelson

WIL-41127-70

7422

25312 7590 11/23/2007
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EXAMINER.

GILBERT, WILLIAM V

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

11/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/706,947	Applicant(s) NELSON, THOMAS J.	
	Examiner William V. Gilbert	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-18 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) 3,8-15,19 and 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 16-18, 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a non-final action. Claims 8-15 and 20-26 remain withdrawn. Claims 3 and 19 are cancelled. Claims 1, 2, 4-7, 16-18 and 20 are examined.

Claim Objections

1. Claim 6 is objected to because of the following informalities: applicant claims "a third footing member", line 1. Applicant also claims "a third footing member" in claim 1, line 7. It is unclear if this references the same "footing member, or if applicant intends for this to be a separate member. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson (U.S. Patent No. 6,230,385).

In regards to this prior art, the Examiner is aware that the same inventor in the prior art is the same as the Applicant in the application at bar. Further, the Examiner is aware that this application is a continuation in part with a parent filing date of 08 November 1999. The new matter entered in the continuation, however, is the "footing member", Claim 1, line 4. The Examiner did not find this present in any of the parent applications. The filing date for this new matter, and therefore Claims 1-7, is 14 November 2003.

Claim 1: Nelson discloses a connector (Fig. 2: 2, 5) comprising a longitudinally extending body (2) having a substantially similar profile along its entire length, the connector has a base (2) and a projection (20) extending from the base, the base has a top and bottom surface, first, second and third footing members (see "A", "B" and "C" respectively from attached Figure 2 from Nelson, below), first and second protrusions ("D" and "E" respectively, below), the protrusions are located on either side of the projection, The first and second footing members are respectively positioned beneath the first and second protrusions, the third footing member is positioned beneath the projection, and the connector sits upon the foam pad (7; the connector sits indirectly on the pad via

portion 5, as it rests on portion 6, which is on 7), and the top surface of the base are substantially in the same plane as the upper surface of the foam pad. The phrase "shaped and dimensioned...limited extend", lines 18 and 19, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

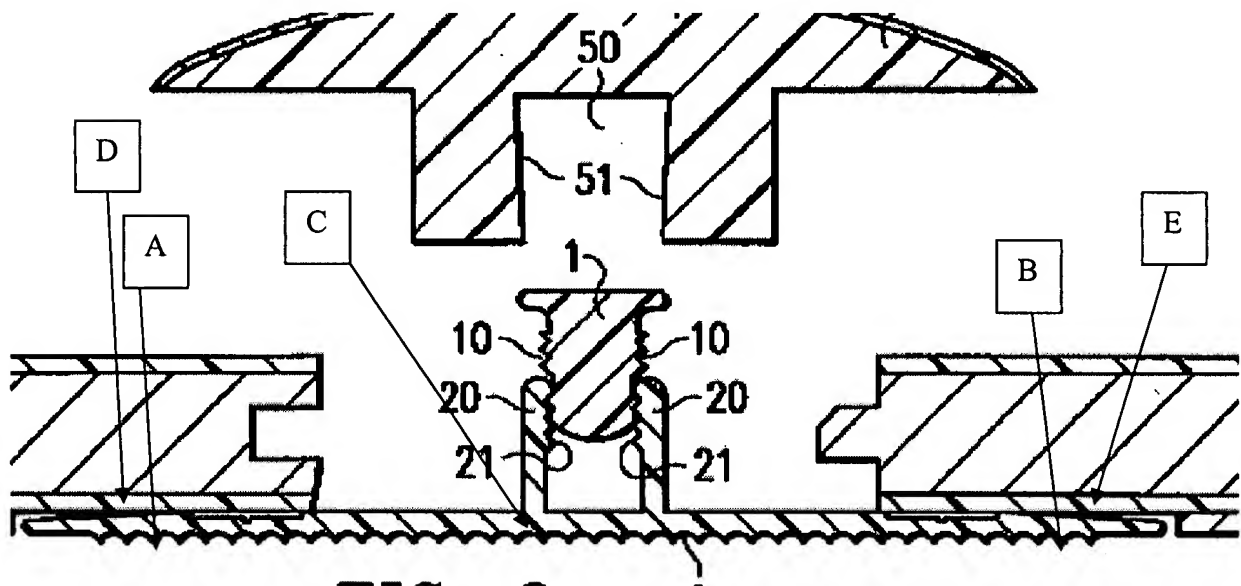


Figure 2 from Nelson

Claim 2: the projections (51) extend vertically from the base and have top, bottom, left and right portions. The phrase, "for insertion...connected" line 3, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 5: the protrusions extend the length of the connector.

Claim 6: a third footing member ("C" above).

Claim 7: a recess (the space between the footing members) is between the first and third footing members and the second and third footing members.

Claims 16-18, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry (U.S. Patent No. 3,614,915).

Claim 16: Perry discloses a disengageable connector (14, 16) having a connector body with a base (65) and a projection (14) extending vertically from a top surface of the base, first and second protrusions (63, 64) extending vertically adjacent first and second edges and along the entire length of the base

where the projection extends beyond the base to form an outwardly extending ear (14', see Fig. 3, generally).

Claim 17: the projection has a top and bottom portion and right and left halves (see 14, generally) for insertion into edges of adjacent panels to be connected (Fig. 5).

Claim 18: the base has a bottom surface (65) and first and second footing member (Fig. 7: 66; opposite end of 16 has a second member) extending down from the bottom surface of the base and in the same direction of the base, the footing members are respectively beneath the first and second protrusions. The phrase "shaped and dimensioned ...flooring panels" lines 4 and 5 is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 20: the first and second protrusions extend beyond the longitudinal extent of the base (portion 65) along at least one end to form a locking tab (see Fig. 5, generally).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson.

Claim 4: Nelson discloses the claimed invention except for the depth of the footing members. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this

limitation because applicant did not state a criticality for the necessity of the limitation and the prior art of record is capable of meeting the limitation as claimed.

Response to Arguments

4. The following addressed applicant's remarks dated 06 September 2007.

The examiner respectfully disagrees with applicant's amendment to the claims as overcoming the rejection (see above) of the Nelson (cited above) reference. As shown above, the Nelson reference does disclose the footers as located below the protrusions and projection members as claimed. Regarding the statement that the "nail slots formed downwardly from the base" versus the protrusions extending vertically from the base: in viewing attached Figure 2 above, the result is the same in that the protrusions extend vertically from the base, whether they extend vertically as a result of being formed vertically, or whether the nail slots are formed into a surface of the base.

Applicant's arguments with respect to claims 16-18, 20 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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WVG
16 Nov 07

David K. Kelly
Patent Attorney
11/22/07